

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

DILLON CALLAWAY

PLAINTIFF

v.

No. 4:19CV7-RP

TIMOTHY MORRIS, ET AL.

DEFENDANTS

**ORDER DENYING PLAINTIFF’S MOTION [29]
FOR RELIEF FROM JUDGMENT OR ORDER**

This matter comes before the court on the plaintiff’s motion [29] for reconsideration of the court’s judgment [13] dismissing various allegations and defendants for failure to state a claim upon which relief could be granted. The court interprets the motion, using the liberal standard for *pro se* litigants set forth in *Haines v. Kerner*, 404 U.S. 519 (1972), as a motion for relief from a judgment or order under FED. R. CIV. P. 60. The plaintiff argues that his *pro se* status and incarceration hindered his ability to gather and present proof to support his allegations – and that the court should reinstate the allegations and defendants dismissed to allow him to do so. The court, however, dismissed the allegations and defendants because the plaintiff’s allegations, taken as true, did not state a valid constitutional claim. A dismissal of this type does not rely upon proof, but upon allegations only. As such, the plaintiff’s argument in the instant motion is without merit.

An order granting relief under Rule 60 must be based upon: (1) clerical mistakes, (2) mistake, inadvertence, surprise, or excusable neglect, (3) newly discovered evidence, (4) fraud or other misconduct of an adverse party, (5) a void judgment, or (6) any other reason justifying relief from the operation of the order. *Id.* The plaintiff has neither asserted nor proven any of the specific justifications for relief from an order permitted under Rule 60. In addition, the plaintiff has not presented “any other reason justifying relief from the operation” of the

judgment. As such, the plaintiff's request [29] for reconsideration is **DENIED**.

SO ORDERED, this, the 23rd day of September, 2020.

/s/ Roy Percy
UNITED STATES MAGISTRATE JUDGE